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RAJASTHAN HIGH COURT, JODHPUR

NOTIFICATION

Jodhpur, February 15, 2025

Guidelines For Recording Of Evidence Of Vulnerable Witnesses, 2024

Preamble

No 02/S.R.O./2025 .-The purpose of this protocol is to present guidelines and recommendations to improve the response of the justice dispensation system to vulnerable witnesses.

This protocol prescribes guidelines while recording depositions of vulnerable witnesses in order to enable them to give their best evidence in criminal proceedings. Each witness is unique and is to be addressed accordingly. The vulnerability of a witness may emerge from a range of circumstances which include, but are not limited to - nature of crime, threats and intimidation, fear of reprisal, age, developmental levels, gender identity, sexual minorities, ethnicity, religious id entity, caste, physical and/or mental disability, lack of infrastructural support, language barriers, geographical location etc. Some of the most challenging cases before judges during the course of their careers are those involving vulnerable witnesses such as children, victims of sexual offences or domestic violence, persons with disabilities, and witnesses experiencing threats to their life and property, among others. Vulnerable witnesses find their interaction with the legal process, especially the criminal justice process intimidating, particularly the courtroom experience. Under these circumstances, unless adequate support is provided, a vulnerable witness may not feel safe to provide robust testimony. Further, the lengthy process of navigating the adversarial criminal justice system or the civil justice system can affect the vulnerable witness' psychological well-being in significant and long-lasting ways.

To respond effectively to the needs of vulnerable witnesses, the justice system needs to respond proactively with sensitivity in an enabling and age-appropriate manner, so that the judicial process is less traumatic and secondary victimisation can be minimised. Sensitive engagement and suitable modifications of existing procedures (within the framework of the law), while ensuring the rights of the accused or the opposite party, can significantly impact the quality of deposition by vulnerable witnesses and potentially the outcome of a trial.

These Guidelines have been developed in furtherance of the Supreme Court's directions in Smruti Tukaram Badade v. State of Maharashtra, and have been drawn from the Guidelines for recording of evidence of vulnerable witnesses in criminal matters prepared by the Delhi High Court and the Protocol for Recording Evidence of Vulnerable Witnesses notified by the Jammu and Kashmir High Court, as well as relevant statutory provisions, judgments, and international standards relevant to vulnerable witnesses.

These guidelines are being issued in supersession of earlier guideline framed vide Notification No. 04/S.R.O./2022 dated 10.03.2022.

OBJECTIVES OF THESE GUIDELINES

1. To enable vulnerable witnesses to depose freely before any court in a safe and secure environment.
2. To minimize harm or secondary victimization of vulnerable witnesses in anticipation and as a result of participation in the justice system.
3. To ensure that the rights of all the parties in the judicial processes are effectively implemented. In the context of the criminal process- the accused's right to a fair trial and due process, the right of the victim to take part effectively in the proceedings, to be treated sensitively and not be subject to secondary victimization, and the protection of the rights of a vulnerable witness (who may not necessarily be a victim), are effectively implemented.

Applicability

1. Short Title, extent and commencement-

a) These guidelines shall be called, "Guidelines for recording evidence of vulnerable witnesses".
b) Unless otherwise provided, these guidelines shall govern the examination of vulnerable witnesses who are victims or witnesses in any case.
c) They shall apply to every court, including Juvenile Justice Boards in the State of Rajasthan.
d) Their application shall commence from the date notified by the High Court of Rajasthan.

2. Construction of the guidelines-

These guidelines shall be liberally construed and interpreted, in view of the extant laws, to uphold the interests of vulnerable witnesses and to promote their maximum accommodation without prejudice to the right of the accused to a fair trial and due process.

3. Definitions -

a. Vulnerable Witness - For the purpose of these guidelines, "vulnerable witness" means and includes-

(i) any child victim or witness who has not completed 18 years of age;
(ii) any victim of an offence under the POCSO Act, 2012;
(iii) any victim of an offence under Sections 64(1), 64(2), 65(2), 66, 67, 68, 70, 71, 74, 75, 76, 77 and 78 of Bhartiya Nyaya Sanhita, 2023;
(iv) any person with disability as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 and considered to be a vulnerable witness by the concerned court;
(v) any witness suffering from "mental illness" as defined under Section 2(s) of the Mental Healthcare Act, 2017 read with Section 124 of the Bhartiya Sakshya Adhiniyam, 2023;
(vi) any witness deemed to have a threat perception under the Witness Protection Scheme, 2018 of the Union Government as approved by the Supreme Court in Mahender Chawla v. Union of India; and

(vii) any other witness deemed to be vulnerable by the concerned court, [including Family Courts, Children's Courts, Juvenile Justice Board, Civil and Criminal Courts, or any tribunal or forum.]*

b. Support Person- Means and includes Support Persons assigned by the Child Welfare Committee under the POCSO Rules, 2020 to render assistance to the child through the process of investigation and trial, or any other person assisting a child in the pretrial or trial process in respect of an offence under the POCSO Act, support person or para legal volunteer provided by the Legal Services Authority under the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, or any other person appointed by the court to provide support including psycho-social support, accompany and assist the vulnerable witness, whether minor or major, to testify or attend judicial proceedings.

c. Best Interests of the Child-Means the basis of any decision taken regarding the child, to ensure fulfillment of the child's basic rights and needs, identify social wellbeing and physical, emotional and intellectual development.

d. Development Level- Development level refers to the specific growth phase in which most individuals are expected to behave and function in relation to the advancement of their physical, mental, socio economical, cognitive and moral abilities.

e. In-Camera Proceedings - Means proceedings wherein the court allows only those persons who are necessary to be present while hearing the witness deposing in the court.

f. Concealment of identity of witness -Means and includes any legislative provision or judicial ruling prohibiting the disclosure of the name, address, school, family, relatives, neighbourhood or any other information which may lead to the identification of a vulnerable witness in print, electronic, social media, etc. or made known to the public at large during investigation, trial and post-trial stage.

g. Comfort Items- Comfort items mean any article of choice of the vulnerable witness which may have a calming effect at the time of deposition and may include stuffed toy, blanket or book.

h. Court House Tour- Means a pre-trial tour of the courtroom and court complex by the Support Person or a para-legal volunteer, as the case may be, to familiarize a vulnerable witness with the environment and the basic process of adjudication and roles of each court official.

i. Live Link-'Live link' means and includes a live television link, audio-video electronic means or other arrangement whereby a witness, while not being physically present in the courtroom is nevertheless present in the courtroom by remote communication using technology to give evidence and be cross-examined.

j. Special Measures - Means and includes the use of legislative provisions, and any mode, method and instrument, etc., considered necessary for providing assistance in recording deposition of vulnerable witnesses.

k. Testimonial Aids - Means and includes screens; single visibility mirrors, curtains, live links, image and/or voice altering devices; or any other technical devices, facilities and equipment.

l. Secondary Victimization- Means victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim.

m. Revictimization- Means a situation in which a person suffers more than one criminal incident over a period of time.

n. Waiting Room - A safe place for vulnerable witnesses where they can wait.

o. Special Measures Direction- The concerned court shall direct as to which special measure will be used to enable a vulnerable witness to depose freely and in a safe, accessible, and comfortable environment. Directions may be discharged or varied during the proceedings, but normally continue to be in effect until the proceedings are concluded.

4. Applicability of guidelines to all vulnerable witnesses-

For the avoidance of doubt, it is made clear that these guidelines shall apply to all vulnerable witnesses as defined in Rule 3(a) of these Guidelines, regardless of which party is seeking to examine the witness.

5. No inference of prejudice to be drawn from special measures-

The fact that a witness has had the benefit of a special measure to assist them in deposition, shall not be regarded in any way whatsoever as being prejudicial to the position of the other side and this should be made clear by the judge at the time of passing order in terms of these guidelines to the parties when the vulnerable witness is examined.

6. Identification of Stress causing factors of adversarial Criminal Justice System-

The Court shall consider the following factors which cause stress, especially but not only limited to child witnesses, rendering them further vulnerable witnesses, and impeding complete disclosure, and take necessary steps to mitigate or minimize the stress. The factors include, amongst others:

a. Multiple depositions;
b. Not using developmentally appropriate language;
c. Delays and repeated adjournments;
d. Testifying more than once;
e. Prolonged/protracted court proceedings;
f. Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, and mental health practitioners, and lack of convergence with authorities such as Child Welfare Committees, District Child Protection Units, One Stop Centres etc.;
g. Fear of public exposure;
h. Anxiety about threats from the accused and/or their associates;
i. Confusion and guilt about testifying against a family member or relative;
j. Lack of understanding of complex legal procedures;
k. Face-to-face contact with the accused;
l. Practices insensitive to developmental needs;
m. Aggressive and inappropriate cross-examination, including asking irrelevant questions;
n. Lack of adequate support, witness protection, and victims services;
o. Sequestration of witnesses who may be supportive to the vulnerable witness;
p. Placement that exposes the vulnerable witness to intimidation, pressure, or continued abuse;
q. Lack of preparation to enable fearless and robust testifying;
r. Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness;
s. Worry about being yelled at, ridiculed, or getting into trouble for testifying;
t. Worry about retaliation or repercussions for themselves or their family;

u. Worry about not being understood or being able to communicate effectively;
v. Formality of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel;
w. Inaccessibility of the courtroom, particularly for vulnerable witnesses with disabilities.

7. Competency of vulnerable witness-

Every vulnerable witness shall be presumed to be competent to testify as a witness, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions due to tender years, disability, either of body or mind, and illness, or any other cause of the same kind, in accordance with Section 124 of the Bhartiya Sakshya Adhiniyam, 2023.

Explanation: A mentally ill person may also be held competent unless the person is prevented by the illness to understand questions.

When conducting the competency examination, the court shall not use "general knowledge" or "current affairs" questions to adjudge competence. Similarly, philosophical questions, such as, what truth means should be strictly avoided.

8. Persons allowed at competence assessment-

Only the following may be allowed to attend the competence assessment:

a. the judge and such court personnel deemed necessary and specified by order of the judge concerned;
b. the counsel for the parties;
c. the guardian *ad litem*;
d. non-offending parent, guardian, friend, relative of a child victim or a person in whom the child has trust or confidence;
e. one or more support persons for a child victim or witness;
f. translator, interpreter, expert or special educator, if necessary;
g. person familiar with the manner of communication of a vulnerable witness with intellectual or physical disability;
h. the accused, unless the court determines that competence requires to be and can be fully evaluated in their absence; and
i. any other person, who in the opinion of the court can assist in the competence assessment.

9. Conduct of competence assessment.-

The assessment of a person, as to their competence as a witness shall be conducted only by the presiding judge.

10. Pre-trial visit of Witnesses to the Court-

Vulnerable witnesses shall be allowed a pre-trial court house tour or tour of the civil court or Juvenile Justice Board, etc., along with the support person or para-legal volunteer, as the case may be, to enable such witnesses to familiarise themselves with the layout, and may include visit to and explanation of the following:

a. the location of the accused in the dock;
b. court officials (what their roles are and where they sit);
c. who else might be in the court;
d. the location of the witness box;
e. a run-through of basic court procedure;
f. the facilities available in the court which may include the waiting room, toilet, separate passage for entry and exit, and testimonial aids;
g. discussion of any particular fears or concerns, including concerns regarding safety in relation to the accused, with the support person, prosecutors and the judge to

dispel the fear, trauma and anxiety in connection with the upcoming deposition at court;

h. demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom, and showing the use of screens (where it is practical and convenient to do so).

11. Meeting the judge -

The Judge may meet a vulnerable witness suomotu on reasons to be recorded or on an application of either party in the presence of the prosecution and defence lawyer, or in their absence before the witness gives their evidence, for explaining the court process in order to help them to understand the procedure and give their testimony, free of fears and concerns.

12. Assistance of an interpreter, translator, special educator or expert-

(i) The court shall ensure that proceedings relevant to the testimony of a vulnerable witness or witness are conducted in language that is simple and comprehensible to the witness.

(ii) Wherever necessary, the court may, suomotu or upon an application presented by either party or a Support Person of vulnerable witnesses take the assistance of a qualified and experienced interpreter, translator, special educator or expert, to enable recording of evidence of vulnerable witnesses, and on payment of such fees as may be prescribed by the State Government or authority concerned.

(iii) The concerned court may consider the qualifications prescribed for interpreters, translators, sign language interpreters, special educators and experts in Rule 5, POCSO Rules, 2020 or any other laws, rules, or judgments of the High Court or Supreme Court in this regard.

(iv) The court may also take the assistance of a person familiar with the manner of communication of a vulnerable witness with physical or intellectual disability while recording evidence.

(v) If, in view of the vulnerable witnesses' age, level of maturity or special individual needs of a witness, which may include but are not limited to disabilities (if any), ethnicity, poverty or risk of revictimization, the witness requires special assistance measures in order to testify or participate in the justice process, such measures shall be provided free of cost.

(vi) If the court appoints an interpreter, translator, special educator or expert, the respective counsel for the parties shall pose questions to the vulnerable witness only through them, either in the words used by counsel or, if the vulnerable witness is not likely to understand the same, in words, signs, or by such mode as is comprehensible to the vulnerable witness and which conveys the meaning intended by the counsel.

13. Legal assistance and legal aid-

The concerned court shall facilitate the right of a child victim under the POCSO Act to take assistance of a legal counsel of their choice. Further, any vulnerable witness who falls within the ambit of Section 12, Legal Services Authorities Act, 1987 or any other laws, rules, or policies that recognise their right to free legal aid may be provided with legal aid by the court either:

a. based on a request by or on behalf of the vulnerable witness; or
b. pursuant to an order of the court on its own motion.

14. Court to allow presence of Support Persons-

(i) The court shall inform vulnerable witnesses that they may take the assistance of a Support Person during the trial. In cases under the POCSO Act, 2012, the concerned court shall take into consideration the role of the Support Persons as provided in Rule 4(9), POCSO Rules, 2020.

(ii) The court shall allow suomotu or on request, verbal or written, the presence of a Support Person of the choice of the vulnerable witness in the courtroom during the deposition, provided that such support person shall not completely obscure the witness from the view of the accused or the judge.

(iii) The court may allow the Support Person to take appropriate steps to provide emotional support to the vulnerable witness in the course of the proceedings and also inform the court if the vulnerable witness needs a break or is feeling stressed or triggered.

(iv) The court shall instruct the Support Person not to prompt, sway, influence or tutor the vulnerable witness during their testimony.

(v) Where no other suitable person is available, and only in very rare cases should another witness in the case, whose deposition has already been completed in all respects, be appointed as a Support Person. The court shall ordinarily appoint a neutral person, other than a parent, as a Support Person. It is only in exceptional circumstances keeping the condition of the vulnerable witness in mind, that the court should appoint a parent as a Support Person. In POCSO cases, however, care shall be taken to ensure that the provisions of the POCSO Rules, 2020 regarding engagement of Support Persons are adhered.

(vi) The court shall allow Support Persons to co-ordinate with the other stakeholders such as police, Special Juvenile Police Unit (SJPU), medical officer, prosecutors, mental health professionals, Child Welfare Committee, Juvenile Justice Board, defence counsels and courts.

(vii) As far as possible, the concerned court shall ensure the continuity of the same Support Person during the deposition.

(viii) If the Support Person is also a witness in the case, their testimony shall be recorded, ahead of the testimony of the vulnerable witness.

15. Right to be informed-

A vulnerable witness, their parents or guardian, lawyer, the Support Person, if designated, or other appropriate person designated to provide assistance shall, from their first contact with the court process and throughout that process, be promptly informed by the Court about the stage of the process and, to the extent feasible and appropriate, about the following:

a. charges brought against the accused, or if none, the stay of proceedings against them;

b. the progress of the case;

c. procedures of the criminal justice process including the role of vulnerable witnesses, the importance, timing and manner of testimony, and the ways in which proceedings will be conducted during the trial;

d. existing support mechanisms for a vulnerable witness when participating in proceedings, including services of a Support Person;

e. schedule of court proceedings that the vulnerable witness is either required to attend or is entitled to attend and the specific time and place of hearings and other relevant processes;

f. right of the informant or person authorized by the informant to be present at the time of hearing of the bail application of an accused under Sections 65(1), 65(2) and 70 of Bhartiya Nayay Sanhita, 2023 or under the POCSO Act;

g. right of vulnerable victims and their dependents to reasonable, accurate and timely notice of court proceedings and bail proceedings under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989;

h. right of vulnerable victims and their dependents to be heard during proceedings of bail, discharge, release, parole, conviction or sentence of any accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989;

i. availability of public and private emergency, and crisis services, including shelters;

j. availability of protective measures;

k. availability of victim's compensation benefits;

l. availability of legal aid;

m. availability of institutional and non-institutional care under the juvenile justice system for vulnerable witnesses who may come under the ambit of a "child in need of care and protection";

n. relevant rights of child victims and witnesses under the POCSO Act and Rules, JJ Act, 2015 and Model Rules or applicable State Rules, if any, and other applicable laws, as well as the United Nations Convention on the Rights of the Child and other international legal instruments, including the Guidelines and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985;

o. the progress and disposition of the specific case, including in a criminal case the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case and sentence imposed;

p. all decisions, or at least those decisions affecting the interests of the victim or vulnerable witness;

q. the process for appeal against the order of the court.

16. Waiting area for vulnerable witness-

The courts shall ensure that a waiting area for vulnerable witnesses with the support person, and the lawyer of the vulnerable witness, if any, is separate from waiting areas used by other persons. Care shall be taken to ensure that the waiting room is used only by the vulnerable witness and the non-offending family members and support persons. The waiting area should be accessible to all vulnerable witnesses, including those with disability. The waiting area for vulnerable witnesses should be furnished so as to make a vulnerable witness comfortable. This may include, but not be limited to, being furnished and equipped with toys, books, games, drawing and painting materials and other such activities, TV, etc. which can help lower the anxiety of the witness. It could include a place for very young child witnesses to rest or sleep. Accessible toilets and drinking water facilities should also be available inside the waiting room or within close proximity. The approach to the waiting area shall be in such a way that allows the witness to access it with ease and without having to confront other litigants, police, or the accused and their associates. The waiting area needs to be equipped with a digital "Case Number Display

Monitor" that shows the case being called in the court. Arrangements for the vulnerable witness to depose from the waiting area, which may include monitors and screens for recording of the evidence of the child shall be made available.

17. Duty to provide comfortable environment-

(i) It shall be the duty of the court to ensure a comfortable environment for the vulnerable witness by issuing directions and also by supervising the location, movement and deportment of all persons in the courtroom including the parties, their counsel, vulnerable witnesses, Support Persons, guardian ad litem, facilitator, and court personnel.

(ii) Separate and safe waiting areas and passage thereto should be provided for vulnerable witnesses.

(iii) Care shall be taken to ensure that the vulnerable witness courtroom is accessible to persons with disabilities.

(iv) The vulnerable witness may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the vulnerable witness testifies may be turned to facilitate their testimony but the accused or the opposite party and their counsel must have a frontal or profile view of the vulnerable witness even by a video link, during the testimony of the vulnerable witness. The witness chair or other place from which the vulnerable witness testifies may also be rearranged to allow the vulnerable witness to see the accused or the opposite party and their counsel, if the vulnerable witness chooses to look at them, without turning their body or leaving the witness stand.

(v) In case of a victim of a sexual offence, care should be taken to avoid exposure of the victim to the accused at the time of recording the evidence, while ensuring the right of cross-examination of the accused and that the accused is in a position to hear the statement of the child and communicate with their advocate.

(vi) While deciding to make available such an environment, the judge may be dispensed with from wearing their judicial robes.

(vii) Access to creche facilities within the court premises should be enabled for vulnerable witnesses who may require child care facilities on the date of their deposition.

18. Directions for Judges of Criminal Courts, Children's Courts and Juvenile Justice Boards -

(i) Vulnerable witnesses shall receive high priority and shall be dealt with as expeditiously as possible, minimizing unnecessary delays and adjournments to avoid repeated appearances of the witness in the Court. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays.)

(ii) Judges and court administrators should ensure that the developmental needs of vulnerable witnesses are identified, recognized and accommodated in the arrangement of the courtroom and recording of the testimony. For instance, judges should use developmentally appropriate language, schedule hearings for the record of testimony bearing in mind the attention span, physical needs and exam schedules of young vulnerable witnesses, and allow the use of testimonial aids as well as interpreters, translators, when necessary.

(iii) The judges should ensure that vulnerable witnesses with disability are able to exercise their right to access the court without discrimination on the basis of disability. In

case of a victim under Sections 74, 75, 76, 77, 78, 64(1), 64(2), 66, 67, 68, 70, 71 or 79, BNS, where the victim is temporarily or permanently mentally or physically disabled, their statement under Section 183(6)(b) shall be considered as a statement in lieu of examination-inchief.

(iv) Additional measures may be taken to enable the recording of evidence of vulnerable witnesses with disability. For instance, steps can be taken to record witness testimony in compliance with Section 313, B.N.S.S. in Braille to ensure a vulnerable witness is not dependant on another person to read their testimony out; use of amplification devices/ document magnifiers/ ensuring that all notices that require a response or an action to be taken (e.g. summons, orders) are available by accessible means and in accessible formats; use of video and audio guides; engagement of sign language interpreters; enabling wheelchair access in the court premises, courtroom and witness box. Adequate time should be given to vulnerable witnesses using communication boards during evidence.

(v) The Court should be satisfied that a victim or vulnerable witness is not scared and that they are able to reveal what happened to them when they are subjected to an examination during recording of evidence. The Court must ensure that the victim or vulnerable witness is not concealing any portion of evidence for the reason that they were ashamed of what happened to them.

(vi) The Court shall ensure that adequate time and opportunity is given to refresh the memory of vulnerable witnesses.

(vii) In cases of sexual offences, judges should avoid asking the vulnerable witness to demonstrate intimate touching on their own body, during the recording of the testimony and vulnerable witnesses can instead be asked to point to a body outline diagram.

(viii) Judges should be flexible in allowing the vulnerable witnesses to have a Support Person present while testifying and should guard against unnecessary sequestration of Support Persons or any other persons permitted to be present during the testimony of the witness.

(ix) Judges should encourage the victim or vulnerable witness to let the court know if they have a problem, do not understand a question or if they may need a break.

(x) Judges should ensure that steps are taken to ensure the atmosphere is comfortable and not intimidating. For instance, the court may consider allowing a limited number of defence lawyers to be present in the courtroom during the deposition of a vulnerable witness or not allowing counsel to ask questions in an intimidating tone or interrupting the witness.

(xi) Judges shall carefully monitor the examination and cross examination of the victim or vulnerable witnesses to avoid any harassment or intimidation to the victim or vulnerable witness.

(xii) Judges may allow a vulnerable witness to carry a comfort item during the deposition.

(xiii) Judges may provide transport or transportation cost for the vulnerable witness in accordance with the guidelines prescribed by the concerned High Court in this regard.

(xiv) Judges shall ensure that the requisite guidelines and Standard Operating Procedures affirmed by the Hon'ble Supreme Court in respect of recording of evidence of vulnerable witnesses is followed.

19. Allowing proceedings to be conducted in camera-

(i) The mandatory requirement of in camera trials as per section 366 B.N.S.S. and Section 37 of the POCSO Act shall be ensured and recorded in the orders passed in such cases. In all other cases, the court may, at the time of testimony of a vulnerable witness, order in writing the exclusion from the courtroom of all persons, who do not have a direct interest in the case including members of the press. Such an order may be made to protect the right to privacy of the vulnerable witness or if the court is of the opinion that requiring the vulnerable witness to testify in open court would cause psychological harm to them, hinder the ascertainment of truth, or result in their inability to effectively communicate due to embarrassment, fear, or timidity.

(ii) In making its order, the court shall consider the developmental level of the vulnerable child witness, the nature of the crime, the nature of testimony regarding the crime, the relationship of the child witness to the accused and to persons attending the trial, their wishes, and the interests of their parents or legal guardian.

20. Live-link television testimony in criminal cases where the vulnerable witness is involved -

(i) Any party in the case, the prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the vulnerable witness be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

(ii) In order to take a decision of usage of a live-link the judge may question the vulnerable witness in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the vulnerable witness about testifying in the courtroom.

(iii) The court on its own motion, if deemed appropriate, may pass orders in terms of (i) or any other suitable directions for recording the evidence of a vulnerable witness.

21. Provision of testimonial aids to prevent exposure of vulnerable witness to the accused-

The court may suo motu or on an application made even by the vulnerable witness, prosecutor or counsel or the guardian ad litem order testimonial aid such as screens, one-way mirror, curtains or other devices to be placed in the courtroom in such a manner that the vulnerable witness cannot see the accused/opposite party while testifying and at the same time ensuring that the opposite party/accused is in a position to hear the statement of the vulnerable witness and communicate with their advocate. The court shall issue an order in writing stating the reasons and describing the approved courtroom arrangement in the judgment.

22. Factors to be considered while considering the application under Guidelines-

(i) The court may order that the testimony of the vulnerable witness be taken by live-link television if there is a substantial likelihood that the vulnerable witness would not provide a full and candid account of the evidence if required to testify in the presence of the accused/opposite party, their counsel or the prosecutor as the case may be or if the vulnerable witness is likely to be traumatised by exposure to the accused.

(ii) The order granting or denying the use of live-link television shall state the reasons therefore and may consider the following:

a. the age and level of development of the vulnerable witness;

b. the physical and mental health, including any intellectual or physical disability of the vulnerable witness;

c. any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the vulnerable witness;

d. the nature of the alleged offence/case and circumstances of its commission;

e. any threats against the vulnerable witness;

f. the relationship of the vulnerable witness with the accused or adverse party;

g. the reaction of the vulnerable witness to any prior encounters with the accused/opposite party in court or elsewhere;

h. the reaction of the vulnerable witness prior to trial when the topic of testifying was discussed by parents or professionals;

i. specific symptoms of stress exhibited by the vulnerable witness in the days prior to testifying;

j. testimony of expert or lay witnesses;

k. the custodial situation of the child and the attitude of the members of the child's family regarding the events about which the child will testify;

l. the wishes of the vulnerable witness on the manner in which they would like to render the testimony; and

m. other relevant factors, such as court atmosphere and formalities of court procedure.

(iii) The court shall ensure ahead of time that the equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant/ accused. The court shall not wait until the victim or vulnerable witness is in the live link room to run checks: delays and malfunctions can be disruptive to the vulnerable witness. Where a live link is being used during the vulnerable witness's testimony, ensure that they are able to see all of the questioner's face. It should be explained that the judge or magistrates can always see the vulnerable witness over the live video link even when the witness cannot see the judge or magistrates.

23. Mode of questioning-

(i) To facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witnesses and may do so by:

a. ensuring that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;

b. protecting vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;

c. avoiding waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand;

d. allowing the vulnerable witness to testify in a narrative form;

e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels;

f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.

(ii) Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness.

(iii) The court should allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court should ascertain the spoken language of the victim or vulnerable witness and the range of their vocabulary before recording the evidence. The court must not allow the question carrying words capable of multiple meanings, questions having use of both past and present in one sentence, or multiple questions, which is likely to confuse a witness. Where the witness seems confused, instead of repetition of the same question, the court should direct its re-phrasing.

Explanation: The reaction of a vulnerable witness shall be treated as sufficient clue that the question was not clear so it shall be rephrased and put to the witness in a different way.

(iv) Given the developmental level of vulnerable witnesses, excessively long questions shall be required to be rephrased and thereafter put to witness.

(v) Questions framed as compound or complex sentence structure; or two part questions or those containing double negatives shall be rephrased and thereafter put to witness.

24. Rules of deposition to be explained to the Witnesses-

The court shall explain to a vulnerable witness to

a) Carefully listen to the questions posed and to tell the court the true version of events and, as far as possible (except in the case of very young children) not to respond by shaking their head to mean yes or no, when answering,

b) To specifically state if the witness does not remember or has forgotten something,

c) To clearly ask when the question is not understood.

A gesture by a vulnerable witness to explain what had happened shall be appropriately interpreted and recorded in the vulnerable witness' deposition. Assistance of an interpreter or special educator shall be taken if the witness is unable to communicate verbally and such statement should be videographed.

25. Compensation-

The court shall apply its mind to the question of award of compensation in every case involving a victim who is a vulnerable witness, having regard to the applicable laws and schemes.

26. Protection of privacy and safety-

Orders and judgments pertaining to cases involving vulnerable witnesses shall be made available on e-courts or on the official portal of the court after redacting identifying information of vulnerable witnesses. Any record containing identifying information regarding a vulnerable witness shall be confidential and kept under seal. Except upon written request and order of the court, the record shall only be made available to the following:

a. Members of the court staff for administrative use;
b. The Public Prosecutor for inspection;
c. Defence counsel for inspection;
d. The guardian ad litem for inspection;
e. Other persons as determined by the court.

27. Protective order-

The depositions of the vulnerable witness recorded by video link shall not be video recorded except under reasoned order requiring the special measures by the judge. However, where any video or audio recording of a vulnerable witness is made, it shall be under a protective order that provides as follows:

(i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case.

(ii) Recording may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem in the office of the court, following a procedure, similar to inspection of documents under provision of General Rules (Civil & Criminal), 2018.

(iii) No person shall be granted access to the recording, or any part thereof unless they sign a written affirmation that they have received and read a copy of the protective order; that they submit to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, they will be subject to the penalties provided by law.

(iv) Any recording, if made available to the parties or their counsel, shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person

violating such protective order is subject to the contempt power of the court and other penalties prescribed by law."

(v) No recording shall be given, loaned, sold, or shown to any person except as ordered by the court. This protective order shall remain in full force and effect until further order of the court.

28. Personal details during evidence likely to cause threat to physical safety of vulnerable witness to be excluded-

A vulnerable witness has a right at any court proceeding not to testify regarding personal identifying information, including their name, address, telephone number, school, and other information that could endanger their physical safety or that of their family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.

29. Destruction of videotapes and audiotapes-

Any video or audio recording of a vulnerable witness produced under the provisions of these guidelines or otherwise made part of the court record shall be destroyed as per provision of General Rules (Civil & Criminal), 2018.

30. Protective measures-

At any stage in the justice process where the safety of a vulnerable witness is deemed to be at risk, depending upon the intensity of the threat perception, the court shall suomotu arrange to have protective measures put in place for the vulnerable witness or refer the matter to the Competent Authority under the Witness Protection Scheme, 2018. Those measures may include the following:

a. prohibiting direct or indirect contact between a vulnerable witness and the accused/opposite party at any point in the justice process;

b. restraint orders;

c. direct continuation of bail conditions during trial;

d. protection for a vulnerable witness by the police or other relevant agencies and safeguarding the whereabouts of the vulnerable witness from disclosure;

e. any other protective measure that may be deemed appropriate, including those stipulated under the Witness Protection Scheme, 2018.

31. Review and Monitoring -

The implementation of the guidelines shall be reviewed annually and for this purpose the Rajasthan High Court shall engage independent research bodies or organizations, reputed academic institutions or Universities or constitute a multi-disciplinary Committee including experts having the experience of working with vulnerable witnesses. The recommendations received shall be promptly acted upon and the guidelines may also be updated based on relevant legal developments.

Additional Guidelines Specific To Child Victims And Witnesses

32. Developmentally appropriate questions for child witnesses-

The questions asked to assess the competency of a child witness shall be appropriate to the age and developmental level of the child; shall not in any manner be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

33. Appointment of Guardian ad litem-

The court may appoint any person as guardian ad litem as per law to a vulnerable child witness who is a victim of, or a witness to a crime having regard to their best interests, after considering the background of the guardian ad litem and their familiarity with the judicial process, social service programs, and human development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of bar / practicing advocate, except a person who is a witness in any proceeding involving the vulnerable witness.

34. Duties of guardian ad litem-

It shall be the duty of the guardian ad litem of the vulnerable child witness so appointed by court to:

a. attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.

b. make recommendations to the court concerning the best interest of the vulnerable witness keeping in view the needs of the witness and observing the impact of the proceedings on the witness.

c. explain in a language understandable to the vulnerable witness, all legal proceedings, including police investigations, status and progress of the trial, child-friendly measures and rights, and witness protection measures, in which the vulnerable witness is involved;

d. assist the vulnerable witness and their family in coping with the emotional effects of participating in any case/proceedings, especially the crime and subsequent criminal or non-criminal proceedings in which the vulnerable witness is involved;

e. remain with the vulnerable witness while the vulnerable witness waits to testify.

35. Testimony during appropriate hours-

The court may order that the testimony of the child witness or child victim should be taken during a time of day when the vulnerable witness is well-rested and does not clash with their routine activities like meal and sleep timings, attending school/exams or other activities specific to that witness.

36. Frequent breaks during testimony-

The child witness or child victim may be allowed reasonable periods of relief and breaks while undergoing depositions, as often as necessary, depending on their age, disability, and developmental need.

37. Measures to protect the privacy and well-being of child victims and witnesses-

(i) Confidentiality of vulnerable witnesses and judicial transparency are not mutually exclusive and vulnerable victims'/witnesses' right to information and access to court records in their own case shall not be restricted in the name of protecting their privacy and confidentiality. It is possible for courts to maintain anonymity of vulnerable witnesses through simple name suppression measures which would then enable the release of court documents without endangering their privacy. Best practices from various countries and international tribunals and courts may be adapted for the purpose of balancing confidentiality and judicial data accessibility and transparency.

(ii) To ensure the privacy and physical and mental well-being of a child victim and to prevent undue distress and secondary victimization, taking into account the best interests of the vulnerable witness, the court may order one or more of the following measures to protect the privacy and physical and mental well-being of the vulnerable child witness or victim:

a. concealing from the public record any names, addresses, workplaces, professions or any other information that could lead to the identification of the child victim or witness in orders, judgments, or any case records accessible to the public. Where the accused is related to the child victim, care shall also be taken to redact the identity of the accused before making the order or judgment accessible to the public;

b. prohibiting the defence lawyer and persons present in the court room from revealing the identity of the vulnerable witness or disclosing any material or information that would lead to the identification of the vulnerable witness in the media;

c. protecting the identity of child victims and permitting disclosure in accordance with relevant statutory provisions and judicial precedents;

d. assigning a pseudonym or a number to a child victim in cases of sexual offences, in which case the full name and date of birth of the child shall be revealed to the accused for the preparation of their defence. In other cases, a pseudonym may be assigned as per request of the parties;

e. avoiding exposure to the accused by using screens or single visibility mirror;

f. through examination in another place, transmitted simultaneously to the courtroom by means of video link; through a qualified and suitable facilitator, such as, but not limited to, an interpreter for vulnerable witness with hearing, sight, speech or other disabilities;

g. holding in-camera trials;

h. if the child victim or witness refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking freely in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video link or a one way mirror visibility into the courtroom. In such cases, the defence lawyer shall remain in the courtroom and question the vulnerable witness, and the accused's right of confrontation shall thus be guaranteed;

i. taking any other measure that the court may deem necessary to advance the right to privacy, including, where applicable, anonymity, taking into account the best interests of the child witness and the rights of the accused.

(iii) Orders and judgments pertaining to cases involving vulnerable child witnesses shall be made available on e-courts or on the official portal of the court after suppressing their identifying information.

38. Standard Operating Procedure to be followed during virtual examination of child witnesses-

Judges shall ensure that the Standard Operating Procedure affirmed by the Hon'ble Supreme Court of India in 'In Re Children in Street Situation' is adhered to in all criminal trials where the child witness does not reside near the court where the trial is conducted and where the child witness is examined virtually, not physically, by the court in which the trial is conducted.

39. Interim arrangement-

Till a permanent Vulnerable Witness Deposition Centre is established and made functional, an Exclusive Courtroom be prepared/ identified in every District Court establishment (or other court complexes) well connected to the Vulnerable Witness Deposition Centre, to be established preferably at ADR Centre, through Video-Conferencing System /Audio-Video Linkage for smooth and proper recording of deposition of the Vulnerable Witnesses.

40. Booking of slot for examination of Vulnerable Witnesses in Vulnerable Witness Deposition Centre-

On receipt of requisition from different Courts relating to the examination of Vulnerable Witnesses in the Vulnerable Witness Deposition Centre, the Officer-in- charge of the VWDC shall book date and time slot for such examination, enter the slot booking in a register to be maintained by him and communicate the same to the concerned Courts well in advance.

41. Manpower required for smooth and efficient running of Vulnerable Witness Deposition Centre-

a) Officer-in-charge - This said Officer-in-charge shall be appointed by the State Government in consultation with the High Court in every District Court establishment (or other court complexes) on adhoc/ contract/ temporary/ permanent basis and he shall ensure management and regulation of the affairs of the VWDC including keeping and maintaining of Records and Data etc.

Till the said arrangement be made, the Secretary, District Legal Services Authority shall function as Officer-in-charge of the VWDC.

b) Technical Assistant-cum-coordinator - This said Technical Assistant shall be appointed by the High Court in consultation with the State Government in every District Court establishment (or other court complexes) on adhoc/ contract/ temporary/permanent basis who shall apart from providing technical support at all ends in smooth and effective running of the VWDC shall assist the Officer-in- charge of the VWDC in managing and regulating the affairs of the VWDC.

Wherever applicable, he shall also function as Remote Point coordinator under Rajasthan High Court Rules for Video Conferencing for Courts 2020 as made by the Rajasthan High Court and approved by the State Government.

Till the said arrangement be made, the System Officer/ System Assistant/ District System Administrator shall function as Technical Assistant of the VWDC.

42. Rajasthan High Court Rules for Video Conferencing for Courts 2020, to apply-

Wherever applicable or in case of any ambiguity, the Rajasthan High Court Rules for Video Conferencing for Courts 2020 as made by the Rajasthan High Court and approved by the State Government shall apply.

43. Residual Provisions-

Matters concerning for which no provision is made in these Guidelines shall be decided by the Court consistent with the interest of the Vulnerable Witnesses without prejudice to the rights of the accused to a fair trial.

BY ORDER OF HON'BLE
THE CHIEF JUSTICE

CHANCHAL MISHRA,
REGISTRAR GENERAL.

राज्य केन्द्रीय मुद्रणालय, जयपुर।